

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK

Assurance No. 16-171

In the Matter of the

**Investigation by Eric T. Schneiderman, Attorney General
of the State of New York, of**

JOHN THOMAS BURCH, JR.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York, Eric T. Schneiderman, (“OAG”), pursuant to the Not-for-Profit Corporation Law (“N-PCL”) § 112, the Estates, Powers, and Trusts Law (“EPTL”) § 8-1.4, and the Executive Law (“Exec. Law”) Article 7-A §§ 172 and 175, has reviewed whether a proceeding or action should be instituted against John Thomas Burch, Jr., (“Burch”), the former founder, Chairman of the Board and President of the National Vietnam Veterans Foundation, Inc., aka the American Veteran Support Foundation (Burch and the OAG shall be collectively referred to herein as the “Parties”). This Assurance of Discontinuance (“Assurance”) summarizes certain findings of OAG’s investigation and sets forth relief to which OAG and Burch have agreed.

I. FINDINGS

OAG has made the following findings:

A. National Vietnam Veterans Foundation, Inc., aka American Veteran Support Foundation

1. On January 30, 1992, the National Vietnam Veterans Foundation, Inc., was formed as a nonprofit corporation in the District of Columbia. The Foundation registered with the New York Office of the Attorney General Charities Bureau in September 2007 in order to solicit charitable donations in the State of New York and was assigned N.Y. Registration Number 40-



51-40. In 2011, the Foundation also began soliciting under an alternative trade name, the American Veterans Support Foundation.

2. One of the Foundation's founding members, Burch, served as the Chairman of the Board of the Foundation and its President from the Foundation's inception until August 12, 2016. Burch primarily operated out of his home in Alexandria, Virginia, which served as the Foundation's corporate headquarters.

3. During his Presidency Burch also maintained full time employment and is himself a Vietnam War Veteran.

4. Since 2010 the Foundation doubled the yearly donations it received from nationwide fundraising efforts from approximately \$3.6 million to \$8.6 million. In its IRS 990 tax returns – which are also filed with the State of New York – the Foundation reported that nearly all of the money raised through its direct mail campaigns was used to pay its fundraisers: (i) 2010- \$4,296,871 raised, \$3,745,904 paid to fundraisers; (ii) 2011 - \$3,630,957 raised, \$3,176,848 paid to fundraisers; (iii) 2012 - \$4,489,637 raised, \$3,968,538 paid to fundraisers; (iv) 2013- \$6,835,659 raised, \$6,087,330 paid to fundraisers; and (v) 2014- \$8,643,900 raised, \$7,736,172 paid to fundraisers.

5. From 2010 through 2016 the Foundation raised \$1,255,263.24 in donations from New Yorkers.

B. Burch's Fiduciary Duties To the Foundation

6. As a paid officer and director of the Foundation, Burch undertook specific duties to the Foundation, its intended beneficiaries, and donors. Directors and officers are required to “discharge the duties of their respective positions in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.” N-PCL § 717(a).



Proper discharge of these duties ensures that a not-for-profit board's financial decisions are made soundly and legally, that an individual director, when faced with an opportunity that could benefit both the organization and him/herself, acts in the organization's interest first, and that the board prudently manages its assets in furtherance of its organization's stated charitable purpose, among other things. Put another way, these fiduciary duties are the high standards by which not-for-profit boards and individual directors are held accountable for the decisions they make and transactions they engage in.

Consumers Union of U.S., Inc. v. State of N.Y., et al., 5 N.Y.3d 327 (N.Y. 2005); *see also S.H. & Helen R. Scheuer Family Foundation, Inc. v. 61 Assoc.'s*, 582 N.Y.S.2d 662 1st Dep't 1992) (N.Y. fiduciary duty standard codified at N-PCL § 717(a)).

7. First, Burch owed duties of care in the management of the Foundation and its assets. These duties included acting prudently in the use of the Foundation's assets by purchasing only necessary goods and services at reasonable prices, making prudent selections of vendors and regularly evaluating their cost and performance, making prudent decisions in grant-making and distribution in the best interest of the Foundation's charitable beneficiaries, and making prudent decisions in the selection and retention of other directors.

8. Burch also owed duties of due care to protect the reputation of the Foundation and its ability to continue its mission by putting reasonable systems in place to ensure appropriate reporting and monitoring of the conduct of the organization, its officers, directors, and contractors, and to detect potential violations of law.

9. Second, Burch had duties of loyalty to the Foundation to act solely in its best interest, to avoid potential or actual conflicts of interest, and to avoid using the Foundation for his private benefit in violation of governing documents and the representations it made to obtain 501(c)(3) tax exemption status from the Internal Revenue Service. These duties included avoidance of actions for his private benefit which could place the Foundation's tax exempt status and deductibility of donors' gifts in jeopardy, or expose it to excise taxes.

10. Third, Burch had duties of obedience to the mission of the Foundation in its advocacy for Vietnam Veterans, both to support and advocate for their legitimate interests, and to avoid conduct that could bring the Foundation, and the causes it advocates, into doubt or disrepute. As set forth in more detail in the findings section below, Burch violated each of these duties.

11. Burch's conduct as set forth herein also violated specific provisions of the N-PCL. N-PCL § 719(a)(1) provides that the OAG, on behalf of the corporation, may hold a director of a corporation liable for an injury resulting to the corporation as a result of the distribution of the corporation's cash or property to directors or officers. N-PCL § 720 provides that the OAG may, on behalf of the corporation, hold an officer or director liable for his negligence or intentional conduct. *See also Vacco v. Aramony*, N.Y.L.J., Aug. 7, 1998, at 21 (Sup. Ct. NY Cty. 1998) (Attorney General had standing to sue officers of the United Way pursuant to N-PCL § 720 for losses suffered by the not-for-profit entity as a result of officers' breaches of fiduciary duty, including the misappropriation of United Way funds for personal use).

12. The Foundation was incorporated in the District of Columbia and is also governed by its nonprofit law, including its Nonprofit Corporation Act of 2010. The District of Columbia Nonprofit Corporation Act codifies the duties of good faith, care, and loyalty referenced above for officers and directors. *See* §§ 29-406-30, 29-406-42. The Foundation is a foreign corporation that is conducting activities in New York, that is registered in New York and that conducts regular fundraising solicitations on New York residents. The Foundation's directors and officers are therefore subject to the same extent as directors and officers of a domestic New York corporation to certain provisions of the New York Not-For-Profit Corporation law, including but not limited to N-PCL §§ 719 and 720, as made applicable by N-PCL § 1318. N-



PCL §§ 719 and 720 may be enforced against the Foundation and its officers and directors in, and such relief granted by, the courts in this State, in the same manner as in the case of a domestic corporation.

C. Misuse of Foundation Funds and Emergency Assistance Program

13. As set forth above, the great majority of the donations collected on behalf of Foundation went to compensate its fundraisers. Accordingly, after fundraising fees and expenses, the Foundation received a comparatively small amount of the donations made to the organization. The Foundation's auditor concluded in his assessment of the organization's internal controls that "due to its large expense in telemarketing [the Foundation] appears to have limited resources to which funds could be depleted or diverted to unintended uses that would be inconsistent with the Foundations [sic] Bylaws, including fraud."

14. As set forth below, the fraction that actually made it to the Foundation to help veterans was further reduced by a pattern of abuse, mismanagement and misspending of the Foundation's revenue. Some of the worst conduct was committed by the Foundation's own President, Burch – a Vietnam Veteran.

15. Even though Burch maintained full time employment, Burch represented to the board in 2012 that he "expend[ed] over 400 hours a year in managing the affairs of the [Foundation]." For this service, Burch received a number of benefits, including a salary. However, the bulk of the Burch's compensation came from the Foundation paying for or reimbursing Burch for nearly every expense he incurred. This included Burch's life and medical insurance, pharmaceutical and medical expenses, parking for his two private automobiles in downtown Washington, D.C., where Burch worked, telephone, fax, internet and building security services for Burch's home, memberships, conference fees, and subscriptions.

16. Burch justified some of these expenses to the board as an exchange for the Foundation's use of an office, bathroom and basement storage space in Burch's home. Burch was not issued 1099s by the Foundation reflecting these benefits and they were not included as part of the amounts on his W-2s. Moreover, this home office was used infrequently given Burch's extensive travel schedule, full-time employment, and the existence of another purported office in Fort Lauderdale.

17. Burch could not justify the hundreds of thousands of dollars of Foundation money that he spent since at least 2010 to support his expensive lifestyle and tastes. This included using Foundation funds to pay for foreign and domestic travel, frequenting night clubs in the Baltimore area on a nearly weekly basis, ordering excessive and expensive food and drink at meals at the country's top restaurants and lavishing gifts (both monetary and otherwise), on women that had either no or only a tangential relationship to a veteran.

18. Burch ran these expenses through the Foundation in a number of ways. On numerous occasions Burch would pay for supposed Foundation business, including dinners, travel, and entertainment, with his own credit cards, and then submit receipts for reimbursement. Burch then directed the Foundation's bookkeeper to pay off one of Burch's several credit cards using those reimbursements. However, the expenses that were being paid off were not related to the Foundation or, in numerous occasions were for fictitious meetings involving individuals that were not present. For example, in 2012 Burch spent approximately \$800 in one night frequenting night clubs and hotels in the Baltimore area. Burch described the nature of these expenditures on the Foundation's expense reimbursement form as "work on homelessness" and "veteran issue."

19. From at least 2010 to 2016, Burch was also unilaterally in charge of the Foundation's "Emergency Assistance Program." The board budgeted tens of thousands of dollars for Burch's discretionary emergency assistance reaching \$21,000 for 2013 and 2014, and \$40,000 in 2015 for these purposes. Burch described the program to the board in 2013 as follows:

The individual grants generally run from \$100 to \$250 on a case by case basis. The requests come to [Burch] informally, usually by text mail or by telephone and sometimes in person. The recipients are usually Veteran family members with small children who are in chronic destitute circumstances. In certain exceptional cases, small grants are given to destitute individuals without close Veteran ties. The grants are often given for several months until the requester is stabilized with a new job or given time to save a home or get over a medical problem. While the Board of Directors has approved an overall budget for the program, the Board does not become involved in individual requests.

20. The Emergency Assistance Fund, to whom the Foundation's board had entrusted the President with sole and unfettered discretion, was also misused by Burch. Instead of being distributed to Veterans in need, these funds were paid to the Burch's relatives, friends and personal acquaintances while legitimate claims for Emergency Assistance were denied or limited in dollar amount. Indeed, nearly all of Burch's "discretionary fund" was awarded to a handful of women that had, at best, tenuous relationships with veterans; let alone Vietnam Veterans. Between 2010 and 2015, Burch awarded significant amounts of cash to only a handful of women, all of whom were born after the Vietnam War ended. Six of those women received over \$10,000 and one over \$20,000.

21. During this same time, several veterans that applied for Emergency Assistance with the Foundation were either turned away or given only a nominal amount of assistance. For example, in May 2015, a Vietnam Veteran with a family, including a five year old daughter, who was unable to secure employment and was unable to pay the rent was furnished with \$250.00 by



the organization and was told that, “with the current capacity of our organization and the number of requests we receive, the most we are able to give at this time is \$250.00 toward your rent.”

22. Burch also awarded thousands of dollars in consultancies including to his wife and retired board members and their wives. The most expensive of these consultancies were for studies and reports which work product was never released to the public and had no immediate benefit to Vietnam Veterans in need.

D. Burch’s Severance Payment

23. On August 14, 2016, the board of the Foundation met at the Army Navy Club in Washington, D.C. At that meeting, Burch was removed from his position as President and Director and from all other roles at the Foundation, effective upon the close of the meeting. At that meeting the two remaining board members awarded a severance to Burch consisting of two month’s salary totaling \$5,231.24 – Burch wrote himself a check for that amount the next day. While only three people, including Burch, attended that meeting – a meeting at which Burch was terminated -- Burch submitted an expense reimbursement for \$100.00 cash tip to the server and cut himself a check for that amount.

II. PROSPECTIVE RELIEF

WHEREAS, John Thomas Burch, Jr., agrees with the above Findings of the OAG;

WHEREAS, OAG, finding the relief and agreements in this Assurance to be in the public interest, accepts the terms of this Assurance in lieu of commencing an action or proceeding;

WHEREAS, the OAG and Burch, each believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Burch and OAG that, in consideration of the making and execution of this Assurance, the following terms apply:



MONETARY RELIEF

1. Burch has represented to OAG that he has very limited funds with which to pay any judgment or other relief, apart from funds which are exempt from execution, and has submitted a signed and sworn financial statement to that effect. The OAG has relied on the accuracy of this representation in agreeing to the payments provided for in Paragraphs 2 and 3 below.

2. Burch shall pay the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000) to the New York Department of Law on or before the Effective Date of this Agreement. This payment shall be made by cashiers or attorney's check or money order payable to the New York Department of Law. OAG may apply ten thousand dollars of the monies paid pursuant to this Paragraph to defray the OAG's cost of investigation in this matter. OAG shall distribute the balance of the funds it receives to a charity or charities providing substantially similar services to the Foundation's stated purpose.

3. Burch shall also repay the sum of \$5,331.24 to the Foundation on or before the Effective Date of this Agreement representing his "severance" payment and cash tip at the meeting where he was terminated. Proof of such payment shall be simultaneously forwarded to the OAG.

4. Burch agrees that he has no claims against the Foundation and waives all right to raise any claims against the Foundation in the future.

COOPERATION WITH ONGOING INVESTIGATION

5. The OAG's investigation into the current and former officers, directors, employees and agents of the Foundation continues. The Foundation and Burch agree that, until the date when the OAG's investigation is concluded, the Foundation and Burch agree to provide

full, complete and prompt cooperation with the OAG's investigation and related proceedings and actions, against any other person, corporation or entity. This includes appearing for an on-the-record examination at the convenience of Burch and the OAG.

BARS AND SUSPENSIONS

6. Burch agrees that he is permanently barred from serving as an officer, director, trustee or fiduciary, of any not-for-profit or religious corporation or other charitable organization or trust incorporated, formed, registered, operating or soliciting contributions in any of the fifty United States or in any United States Territory or Commonwealth.

APOLOGY

7. Burch shall execute the letter of apology to the People of the New York and, in particular, the Veterans of the Vietnam War, in the form attached hereto as Exhibit A.

III. ADDITIONAL PROVISIONS

1. OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by Burch and OAG's own factual investigation as set forth in the findings above. To the extent that any material representation by Burch is later found to be inaccurate or misleading, this Assurance is voidable by OAG in its sole discretion.

2. If the Assurance is voided or breached, Burch agrees that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is voided or breached, Burch expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude OAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against



Burch, or from using in any way any statements, documents or other materials produced or provided by Burch prior to or after the date of this Assurance.

3. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Burch in agreeing to this Assurance.

4. Burch represents and warrants, through his signature below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

5. This Assurance may not be amended except by an instrument in writing signed on behalf of OAG and Burch. This Assurance may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by Burch and the OAG. The Effective Date of this Assurance is the last date on which Burch and the OAG have signed this Assurance.

6. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than OAG, may assign, delegate, or otherwise transfer any of their rights or obligations under this Assurance without the prior written consent of OAG.

7. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

A handwritten signature in black ink, appearing to be the initials 'J.M.' or similar, located in the bottom right corner of the page.

8. To the extent not already provided under this Assurance, Burch shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance.

9. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing, reference Assurance No. 16-171, and shall be directed as follows:

If to OAG, to:

Elizabeth Ann Fitzwater, Esq.
Assistant Attorney General, Charities Bureau
120 Broadway, 3rd Floor
New York, NY 10271

If to Burch to:

Paul R. Kramer, Esq.
Paul R. Kramer, LLC
1 North Charles Street, Suite 1104
Baltimore, Maryland 21201

10. Acceptance of this Assurance by OAG shall not be deemed approval by OAG of any of the practices or procedures referenced herein, and Burch shall make no representation to the contrary.

11. Evidence of a violation of this Assurance by Burch shall constitute prima facie proof of violation of the applicable law as to that party in any action or proceeding thereafter commenced by the OAG.

12. If a court of competent jurisdiction determines that Burch has breached this Assurance, Burch shall pay to OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

13. OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. OAG is willing to accept this Assurance in lieu of commencing a statutory



proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of law principles.

14. Except as otherwise set forth herein, nothing contained herein shall be construed as to deprive any person of any private right under the law.

IN WITNESS WHEREOF, this Assurance is executed by the Parties as follows:

Dated: November 2, 2016

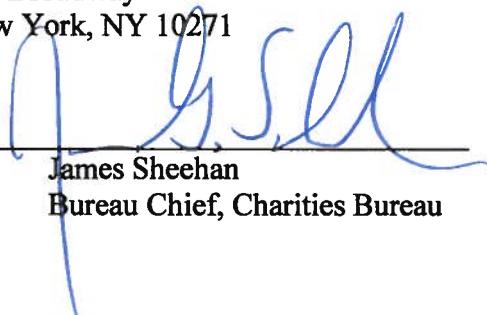
John Thomas Burch, Jr.



Dated: November 2, 2016

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, NY 10271

By: _____



James Sheehan
Bureau Chief, Charities Bureau



OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK

Assurance No. 16-171

In the Matter of the

**Investigation by Eric T. Schneiderman, Attorney General
of the State of New York, of**

JOHN THOMAS BURCH, JR.

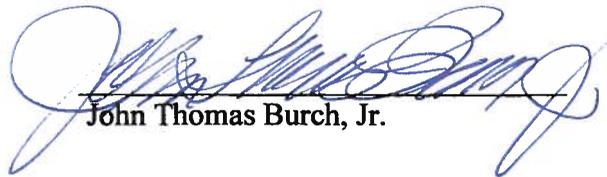
EXHIBIT A

I was founder, President and Chairman of the Board of the National Vietnam Veterans Foundation. This letter is my apology to the millions of individuals that donated to the National Vietnam Veterans Foundation, which also solicited money using the name the American Veterans Support Foundation. As donors, you put your trust in me to make sure that your donations helped veterans, not to pay professional fundraisers and finance my personal entertainment pursuits. You sent in millions of checks -- \$10.00, \$15.00 and \$25.00 at a time. That is real money from real people who sacrificed those amounts so that a veteran would have a meal, be able to call home or have a place to sleep for at least one night. Those checks added up, and in 2014 we had a record year for donations reaching nearly \$9 million. About 90% of your money went to our fundraisers; that is unacceptable. Much of the rest was not spent in the manner that we described when we solicited money from you.

This letter is also my apology to the people that we used as a prop in order for our fundraisers to collect money -- the veterans of the Vietnam War. These veterans are one of the most overlooked and underappreciated group of veterans in United States' history. My actions as President only added another insult to these heroes. As a Vietnam Veteran, I should have known better.

As a Vietnam Veteran and as a human being I am ashamed of my actions. The National Vietnam Veterans Foundation has shut down, I have agreed never again to handle charitable funds, and I am repaying what I can to the New York Attorney General. I know that I can never repair the damage my organization has inflicted on donor confidence, but I urge you to continue supporting our veterans, and the worthy charities out there who are assisting them. Mine, however, was not one of them.

Dated: Alexandria, Virginia
November 2, 2016


John Thomas Burch, Jr.